In the High Court of Judicature for Rajasthan
Jaipur Bench

1-Company Application No.33/2007 by Official Liquidator in Co. Petition No.10/80 In the matter of M/s Jaipur Spinning & Weaving Mills Ltd (In liquidation);

2-Company Application No.46/2007 by Poddar Mills Ltd in the matter of M/s Swadeshi Polytex Ltd
Versus OL – M/s Jaipur Spinning Mills & (3) Ors.

3-**Company Application No.56/2007 by M/s Swarn Bhumi Township (P) Ltd in the matter of M/s Swadeshi Polytex Ltd**
Versus OL – M/s Jaipur Spinning Mills & Anr.

4-Company Application No.60/2007 by M/s Swarn Bhumi Township (P) Ltd in the matter of M/s Swadeshi Polytex Ltd
Versus OL – M/s Jaipur Spinning Mills & Anr.

5-Company Application No.61/2007 by M/s Kailash Hospital & Research Centre Ltd in the matter of M/s Swadeshi Polytex Ltd
Versus OL – M/s Jaipur Spinning Mills & (2) Ors.

Date of Order ::: 07/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Gopal K. Garg for Official Liquidator
Mr. S.M.Mehta Sr. Adv.,with)
Mr. S.S.Hora) for applicant Poddar Mills Ltd. (No.46/07)
Mr. Sudhir Gupta for applicant State Bank of India (Secured Creditors)
Mr. Alok Sharma, for applicant-RKSrivastava (bidder) (46/07)
Mr. B.L.Sharma) for applicant-M/s Swaran Bhumi (60/07)
Mr. S.R.Bajwa & Mr. VR Bajwa) for -do- (Co.Appl.56/07)
Mr. Alok K.Agrawal) for applicant
Mr. Nitin Jain) M/s Kailash Hosp. (Co.Appl-61/07)
Mr. R.C.Joshi for Ajay Poddar-applicant (Co.Appl-33/07)

At joint request, these five applications arising out of common facts have been finally heard together and are being disposed of by this order.

Since facts have been dealt with in Company

Application No.33/07 and other ones are off-suit thereto; as such they are taken note of from Application No.33/07.

Re. Company Application No.33/07

This application has been filed by Official Liquidator attached to this Court (“**the OL**”) seeking approval of the Bid offered in pursuance of tender Notice dt.07/08/07 widely published including in daily news paper “Dainik Bhaskar” dt.08/08/07 whereby tenders were invited for sale of immovable property of M/s Jaipur Spinning & Weaving Mills Ltd (in liquidation vide winding up order dt.02/12/83 in Company Petition No.10/1980). Tender notice, ibid, relates to sale of lease-hold land “**as is where is basis**” (Open land and constructed building thereon which is a part & parcel) ad measuring 56,629 sq.yds (47,349 sq.mtrs) belonging to the Company (in liquidation & lessor) which was given vide registered lease deed dt.30/12/1964 in favour of M/s Poddar Mills Ltd (for short, “lessee Company”) for 99 years situated near Railway station behind Shri Ram Mandir, Podarpuri (Power House Road) Bani Park, Jaipur, against annual rent of Rs.20,000/- duly increased to Rs.35,510/- per year for 999 years vide deed dt. 23/08/1968.

The lessee Company had filed Company

Application No.100/2002 alongwith Judge's summons inter-alia praying that capitalized value of land in question be fixed and the OL be directed to disclaim the said land U/s 535 of the Companies Act, 1956 "(**the Co. Act**") and the amount be directed to be deposited by applicant (lessee Co.) and to transfer assign the reversionary rights & other interests in the said land in favour of lessee Company. The said application No.100/02 was opposed by Secured Creditors (State Bank of India) and the OL; and after hearing the parties, this Court observed vide order dt.26/05/06 ad infra:

> "**6.** Having heard the submissions advanced before me, I am of the view that t**he applicant being the lessee, has no preferential right to purchase the property. In all fairness, the property is required to be sold in an open auction and the applicant may take part in auction proceedings**. The State Bank of India is directed to re-determine the market value of the property and thereafter the O.L. Shall initiate auction proceedings.
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> The application stands disposed of as indicated above."

In pursuance of aforesaid order, secured creditor (SBI) made its valuation of the leased land in question but after hearing the parties, this Court

considered it proper to get the same valued by Government agency. Finally, Jaipur Development Authority, Jaipur vide its letter 19/04/07 intimated that as per Sale Value Committee convened on 18/04/07, it decided minimum value of the aforesaid land as Rs.25,000/- per sq.mtr. Accordingly after value assessed by Jaipur Development Authority (supra), this Court finally directed the OL to proceed further and initiate auction proceedings – in terms whereof, tender notice dt.07/08/07 was issued and widely published on 08/08/07 (supra); wherein taking note of valuation made by JDA, reserve price of the said lease-hold property offered for sale was fixed as Rs.118,37,25,000/- (Rs.One hundred eighteen Crores Thirty Seven lacs Twenty five thousand only) with the stipulation that tender/offer should accompany by demand draft of Rs.Four Crores only non-interest bearing as Earnest money deposit payable at Jaipur in favour of the Official liquidator of M/s Jaipur Spinning & Weaving Mills Ltd (in liquidation) so as to reach on or before 06/09/07 upto 5.00 P.M.

Pursuant to aforesaid tender notice, in all 37 tender forms were sold but only two tender forms duly filled & sealed were received in the office of Official liquidator on or before last date 06/09/07 alongwith earnest money of Rs.Four Crores (1) M/s

Swarn Bhumi Townships Ltd & (2) of Shri RK Srivastava, against whom there was allegation imputed by Kailash Hospital that Shri Srivastava has offered bid as its Agent.

Applicants (1) RK Srivastava & (2) M/s Swarn Bhumi Townships Ltd claiming themselves to be one of bidders to auction proceedings having taken place under orders of this Court, have separately filed applications dt.28/09/07 & 04/10/07 respectively for their impleadment as party respondents to Co.Appl. No.46/07. This Court considered it proper to implead them as party respondents vide order dt.05/10/07.

Sealed tenders were to be opened as per tender notice on 12/09/07 at 11 AM before the OL and as per tender notice, bidders may raise/revise their offers upwards and sale was made having right to reject any or all the offers received without assigning any reason, subject to the permission and confirmation of this Court. Tenders offered pursuant to aforesaid notice were opened on 12/09/07. It was alleged by other bidder M/s Swarn Bhumi Townships Ltd that Shri R.K.Srivastava (one of bidders) had deposited only Three Crores & Ninety Lacs towards earnest money on 06/09/07 and balance earnest money of Rs.Ten Lacs through Bank draft was deposited on 12/09/07. It has come on record the draft of Rs.Ten

lacs allegedly submitted on 12/09/07 in favour of the OL was issued by its Banker on 22/08/07. Indisputably, M/s Swarn Bhumi Townships Ltd offered bid of Rs.6.70 Crores only while Shri R.K.Srivastava offered bid of Rs.Twenty Crores.

In the background (supra), the OL submitted Appl. No.33/07 for finalisation and approval of auction proceedings initiated under orders of this Court. However, Counsel for OL and Secured Creditors (SBI) jointly submit that looking to minimum reserve price in tender notice, it was first effort being made of auction of lease-hold property in question of lessor Company (in liquidation) and that apart, amount offered by two bidders is highly inadequate and both the Counsel jointly prayed to cancel the tender notice dt.07/08/07 published in Dainik Bhaskar on 08/08/07 besides other news papers.

At this stage, reply was filed by lessee Company (M/s Poddar Mills). Two bidders (1) R.K. Srivastava in **Co. Appln. No.46/07** & (2) Swarn Bhumi Township Ltd **(Co. Appln. No.60/2007)** both have separately filed applications. **Co. Appl. No.61/2007** was filed by M/s Kailash Hospital & Research Centre Ltd on the pretext that the bid offered by Shri R.K. Srivastava was its agent and in fact had acted upon on behalf of M/s Kailash Hospital; as such it is not

R.K.Srivastava the bidder but M/s Kailash Hospital should be substituted as highest bidder.

A separate application was filed by Ajay Poddar seeking direction to the OL to furnish him correct information about debts & liabilities which he is required to pay in reference.

This Court has considered rival contentions advanced by Counsel for respective parties and with their assistance, have carefully examined the material on record. It has come on record that earnest efforts were made for disposal of the land & property in question through an Open auction and this fact cannot be ruled out that it is a lease-hold property and may not fetch the price, which the other adjoining free-hold property can fetch in the market. However, looking to the material came on record, the prices quoted by two bidders who offered their respective bids (Rs.Twenty Crores by R.K.Srivastava; & Rs.6.70 Crores by Swarn Bhumi Township Ltd) in pursuance of tender notice dt.07/08/07, in the opinion of this Court, are highly inadequate and the tender notice deserves to be cancelled. Accordingly, tender notice dt.07/08/07 published widely in news papers (supra) on or about 08/08/07 stands cancelled and after making fresh valuation of the property in question through Government approved valuer and the

Government land valuation agency by wide circulation of the public tender notice with prior permission of this Court by resorting recourse in accordance with law.

As regards application of Ajay Poddar filed by Shri R.C.Joshi, Counsel, vide order dt.17/08/07 in order to examine bonafides, this Court directed applicant-Ajay Poddar to disclose his intention for revival of the unit submitting the steps taken and future plan and cause of action besides the scheme on which he relies. It appears that after the direction vide order (supra), no efforts were made obviously for the reason that the Company stood wound up under orders of this Court way back on 02/12/83 in Co. Petition No.10/1980 and even after 24 years, without bonafide efforts, application has been moved and that apart, earlier application filed by M/s Poddar Mills was already dismissed by this Court vide order dt.26/05/06 (quoted supra) observing that lessee can also participate in the open auction, application of Ajay Poddar being of no substance stands rejected.

Re. Company Application No.46/07

Applicants have raised objections by moving applications with regard to the tender notice in question.

M/s Poddar Mills Ltd (applicant in Co.

Appln. No.46/07) raised objection on the premise that the property put to auction under tender notice in question has been leased out to M/s Poddar Mills Ltd and only lessor's reversionery right could be transferred but not actual possession of the property in question and that apart, terms & conditions of tender notice in question have projected a disruptive condition that possession of the lease holder land will be handed over on receipt of full sale price **"as is where is basis"**, which according to Shri S.M.Mehta Counsel for lessee Company (M/s Poddar Mills) is contrary to law.

At this stage, on behalf of the Official Liquidator and so also secured creditor, it has been submitted that the lessee Company has violated conditions of lease, itself as is evident from material on record particularly in view of para 10 of the application filed by Swarn Bhumi Township Ltd that the property in question has been purchased vide two registered conveyance deeds dt.19/07/07 - in support whereof, however, no document has been placed on record but on the strength whereof, Counsel for the OL submits that on violation of conditions of lease, it can be determined and the OL may be permitted to take possession of lease-hold property and put to auction under tender notice afresh.

However, on a specific question put to Shri Bajrang Lal Sharma Sr. Counsel appearing for Swarn Bhumi Township Ltd and Shri Sagar Mal Mehta Sr. Counsel for lessee Company (M/s Poddar Mills) both have admitted this fact that 35380 sq yds of land which forms part of 56629 sq. yds (47349 sq. mtrs) has been transferred by two regd. conveyance deeds dt.19/07/07 in favour of Swarn Bhumi Township Ltd.

Be that as it may, without entering into controversy any further at this stage, this Court is of the considered opinion that since present one are not the proceedings initiated to examine the questions as to the lease-hold rights or its violation on the part of lessee Company. In case the OL and Secured Creditors are felt aggrieved by acts of the lessee Company resulting in violation of terms and conditions of the lease in question, they are free to raise and initiate independent proceedings in accordance with law. Thus, this Court refrains from expressing any opinion on this count at this stage.

As regards submission made by lessee Company (M/s Poddar Mills) raising objections to the terms & conditions stated in the tender notice in question, since this Court has observed to cancel the tender notice, itself, (supra), such a grievance raised by any party does not require to be adjudicated upon.

However, it is made clear that the OL will take note of all objections came forward on record while taking approval and permission of this Court before issuing tender notice afresh in accordance with law. In the light whereof, **Co.Appln. No.46/07** deserves to be dismissed.

Re. Company Application No.60/07

Objection raised is that applicant Swarn Bhumi Township Ltd is only the valid bidder having deposited requisite earnest money of Rs.Four Crores within time and the property put to auction under tender notice in question is a lease-hold property which would in no manner fetch the market value more than what has been offered by it as bid of Rs.6.70 Crores in pursuance to tender notice dt.07/08/07. Counsel further submits that the property being lease hold, no material has been placed by the OL as to on what basis, such reserve price has been fixed of Rs.25,000/- per sq. mtr as notified in the tender notice in question and being the only valid bidder, taking note of value having been assessed by secured creditor (SBI), its bid deserves to be accepted. Counsel also submits that conditions of tender cannot be changed or deviated by the Authority and no relaxation is permitted unless there is clause in the tender notice and since Shri RK Srivastava did not

deposit full earnest money on or before last date 06/09/07, only valid bid was of applicant Swarn Bhumi Township and non-else; and in support, has placed reliance upon decisions of Apex Court in **Shri Harminder S. Arora Vs. Union of India (AIR 1986 SC 1527); Global Energy Ltd Vs. Adani Exports Ltd (2005 (4) SCC 435) & BSNJoshi & Sons Ltd Vs. Nair Coal Service Ltd (2006(11) SCC 548**).

Having considered the aforesaid contention besides other material on record (supra), in the opinion of this Court, once the bid of Rs.Twenty Crores being offered by another bidder, Shri R.K. Srivastava in pursuance of tender notice in question, has been held to be highly inadequate, this Court finds no substance in either of contentions advanced by applicant Swarn Bhumi Township Ltd; and in the light of what has been said (supra), judgments relied by Counsel are of no assistance; accordingly, Company Appln. No.60/07 is devoid of any merit.

Re. Company Application No.61/07

Basic objection raised by M/s Kailash Hospital is that Shri R.K.Srivastava has submitted bid on their behalf as its Agent and their relationship is of principal and Agent and all drafts amounting to Rs.Four Crores deposited as requisite earnest money in terms of tender notice dt.07/08/07

were issued from their Banker and the power of attorney was executed in his favour was produced to show that in fact it was M/s Kailash Hospital who was the bidder on whose behalf, Shri R.K.Srivastava acted as their Agent to offer the bid of Rs.Twenty Crores pursuant to tender notice in question; as such being highest bidder, their bid deserves to be accepted. Counsel further submits that if this Court comes to the conclusion that if the property put to auction under tender notice in question may fetch better market value than offered in the impugned bids and in that eventuality if arrives at a conclusion to cancel the tender notice, itself, then atleast earnest money deposited through drafts of their Banker amounting to Rs.Four Crores by their Agent R.K.Srivastava be returned and sent to their Banker where from drafts were issued.

Per contra, Counsel for Shri R.K.Srivastava has filed reply to the application (No.61/07), as well and has seriously opposed to their objections. Counsel for bidder Shri R.K.Srivastava submits that application submitted M/s Kailash Hospital is not maintainable as it has no locus standi and that apart, neither Kailash Hospital was purchaser of the tender form nor was the bidder.

It has also been brought to the notice that

criminal complaints were filed by M/s Kailash Hospital and Shri R.K.Srivatava against each others; and proceedings are pending before High Court at Allahabad where an undertaking is said to have been furnished by Shri R.K.Srivastava.

It appears from material on record that M/s Kailash Hospital has not purchased any tender document and tender form was purchased and submitted by Shri R.K.Srivastava in the Office of the Official Liquidator in pursuance of tender notice. No documents are available which may show about M/s Kailash Hospital was also one of the bidders having offered any bid in pursuance of tender notice in question - in absence whereof, raising objection through their application and participating in proceedings which were initiated pursuant to tender notice, at least applicant M/s Kailash Hospital has no locus standi.

If at all transaction between M/s Kailash Hospital and the alleged agent has taken place, atleast this Court cannot examine in the present auction proceedings as to whether M/s Kailash Hospital was the bidder and Shri R.K. Srivastava has acted on its behalf as agent, which in the opinion of this Court, can be examined only in separate proceedings where disputes if any arisen, can be

decided in accordance with law after affording opportunity to either of parties.

That apart, this Court has taken decision to cancel tender notice, itself, as a consequence whereof, earnest money deposited under orders of this Court with the Bank with an understanding that it would not confer any right in favour of the parties, must be returned back to its offerer who submitted alongwith tender form in the office of the OL, and Co. Appln. No.61/07 alongwith objection raised by M/s Kailash Hospital deserves to be dismissed and the applicant will be at liberty to initiate proceedings available under law and not in these proceedings.

Re. Company Application No.56/07

This application has also been filed by M/s Swarn Bhumi Township with the grievance that the OL has not acted fairly and was in collusion with one of bidders Shri R.K.Srivastava; as such criminal proceedings be separately initiated by holding inquiry U/s 340, CrPC for alleged offences against the OL attached to this Court. Counsel for Swarn Bhumi Township (applicant) submits that part of earnest money of Rs.Ten Lacs was accepted by the OL after last date (06/09/07) fixed under the tender notice in question, which was cut-off date for submitting earnest money along with bid offered of

the proposed auction and long conversation alleged to have taken place between the OL & Shri R.K. Srivastava (one of bidders) showing their connivance and much emphasis has been laid upon cellular phone details.

After going through the pleadings and documents brought on record by either of parties, in the opinion of this Court, acceptance of part of earnest money after last date (06/09/07) and conversation allegedly with one of bidders will in no way impute any malice on the part of the Officer and no adverse inference can therefore be drawn on such premises and that apart, once having arrived at conclusion (supra) to cancel the tender notice in question, controversy raised if any does not survive for further examination by this Court as to whether if part of earnest money has been deposited after last date (06/09/07), what will be its effect; and accordingly, **Co. Appln. No.56/07** deserves to be dismissed.

In the net result, Co. Appln. No.33/07 stands disposed of with the direction that tender notice dt.07/08/07 published in news papers (supra) on or about 08/08/07 is hereby cancelled and the OL is directed to have a fresh valuation of the property in question through Government valuer and through

other approved land valuation agency and initiate auction proceedings afresh by wide circulation of the public tender notice with prior permission of this Court by resorting to a recourse in accordance with law.

Other Company Application Nos.46/07, 56/07, 60/07 & 61/07 fail and are hereby dismissed with the observations made **(supra)** and the earnest money deposited by two of bidders (1) Shri R.K.Srivastava & (2) Swarn Bhumi Townships each to the tune of Rs.Four Crores, which were deposited with Scheduled Bank in the light of order dt.05/10/07 in Co.Appln. No.46/07, be returned back forthwith through bank drafts to respective bidders (supra) who submitted with the OL, in terms of tender notice dt.07/08/07 under due acknowledgment receipt whereof.

(**Ajay Rastogi), J.**

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